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THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD

9 BEFORE THE
10 CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. AC-2011-11

13 **KEVIN EDWIN BROOKS**
14 **53 Langford Lane**
15 **Ladera Ranch, CA 92694**

ACCUSATION

16 **Certified Public Accountant**
Certificate No. 62641

17 Respondent.

18
19 Complainant alleges:

20 PARTIES

- 21 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
23 2. On or about November 13, 1992, the California Board of Accountancy (CBA) issued
24 Certified Public Accountant Certificate Number 62641 to Kevin Edwin Brooks (Respondent).
25 The Certified Public Accountant Certificate will expire on November 30, 2012, unless renewed.
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27
28

JURISDICTION

3. This Accusation is brought before the CBA under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5063(b)(3) and (4), state:

(b) A licensee shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2003, within 30 days of the date the licensee has knowledge of the events:

(3) Any notice of the opening or initiation of a formal investigation of the licensee by the Securities and Exchange Commission or its designee.

(4) Any notice from the Securities and Exchange Commission to a licensee requesting a Wells Submission.

5. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(h) Suspension or revocation of the right to practice before any governmental body or agency.

"(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation."

6. Section 5107(a) of the Code states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTS

8. On May 13, 2009, the CBA received a letter dated May 11, 2009 from counsel for Respondent, notifying the CBA of Respondent's suspension from appearing or practicing before the Securities and Exchange Commission (SEC) as an accountant. The letter stated a final judgment as to Respondent in *Securities and Exchange Commission v. Quest Software, Inc.*, Case No. 8:09-cv-315, was rendered on April 1, 2009 in the United States District Court, Central District of California.

9. Enclosed in his counsel's letter was an Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions (Securities and Exchange Act of 1934 Release No. 59785/April 17, 2009, Accounting and Auditing Enforcement Release No. 2964/April 17, 2009, Administrative Proceeding File No. 3-13447). The Order noted that Respondent submitted an Offer of Settlement, which the SEC determined to accept, and Respondent consented to the entry of the Order. The SEC's complaint alleged that Respondent misstated Quest's financial statements by failing to report compensation expense associated with stock options granted in-the-money through undisclosed backdating of grant dates from 1999 through 2001. The complaint also alleged that Respondent failed to ensure the stock option grants at Quest were properly accounted for and disclosed. The complaint further alleged Respondent caused misrepresentations to be made to Quest's auditors by stating in management representation letters that all stock options were made with an exercise price equal to the fair market value of Quest stock on the date of grant.

10. A final judgment was entered against Respondent on April 1, 2009, which permanently enjoined him from future violations of Section 17(a)(2) and (3) of the Securities Act of 1933 and Sections 13(b)(5) and 16(a) of the Exchange Act and Rules 13b2-1, 13b2-2, and 16a-

1 3 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and
2 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, in the civil
3 action entitled *SEC v. Quest Software, Inc., et al.*, Civil Action Number SA CV 09-315 AG
4 (MLGx), in the United States District Court for the Central District of California. The final
5 judgment also ordered Respondent to pay a civil penalty of \$60,000, disgorgement of \$34,775,
6 and prejudgment interest of \$5,808.29. Respondent consented to the entry of the judgment
7 without admitting or denying any of the allegations in the complaint.
8

9 11. The Order set forth in Securities and Exchange Commission Release No. 59785/
10 Administrative Proceeding File No. 3-13447 suspends Respondent from appearing or practicing
11 before the SEC as an accountant, and provided that after five years from the date of the Order,
12 Respondent may request the SEC to consider his reinstatement by submitting an application to
13 resume appearing or practicing before the SEC.
14

15 FIRST CAUSE FOR DISCIPLINE

16 (Discipline by SEC)

17 12. Respondent is subject to disciplinary action under section 5100(l) of the code in that:
18 (i) on or about April 1, 2009, final judgment was entered against Respondent by the SEC
19 enjoining Respondent from further SEC violations, and ordering Respondent to pay a civil
20 penalty of \$60,000, disgorgement of \$34,775, and prejudgment interest of \$5,808.29; and (ii) on
21 or about April 17, 2009, in SEC Release No. 59785/ Administrative Proceeding File No. 3-13447,
22 the SEC suspended Respondent's right to appear or practice before that body. The circumstances
23 leading to Respondent's suspension are set forth in paragraphs 6 to 11, above.

24 SECOND CAUSE FOR DISCIPLINE

25 (Discipline by Governmental Agency)

26 13. Respondent is subject to disciplinary action under section 5100(h) of the code in that
27 on or about April 17, 2009 a governmental body or agency suspended Respondent's right to
28 practice before that governmental body or agency following a judgment against Respondent by

1 that governmental agency on or about April 1, 2009. The circumstances are described in
2 paragraphs 6 to 12, above.

3 THIRD CAUSE FOR DISCIPLINE

4 (Failure to Report Formal Investigation)

5 14. Respondent is subject to disciplinary action under sections 5100(g) and 5063(b)(3) of
6 the code in that Respondent failed to report his investigation by the United States Securities and
7 Exchange Commission to the CBA within 30 days of notice thereof.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Failure to Report Wells Submission)

10 15. Respondent is subject to disciplinary action under sections 5100(g) and 5063(b)(4) of
11 the code in that Respondent failed to report a request from the United States Securities and
12 Exchange Commission, made on or before February 28, 2008 for a Wells Submission to the CBA
13 within 30 days of notice thereof.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the California Board of Accountancy issue a decision:

17 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
18 Accountant Certificate Number 62641, issued to Kevin Edwin Brooks;

19 2. Ordering Kevin Edwin Brooks to pay the California Board of Accountancy the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 5107; and

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: JULY 15, 2011

Patti Bowers
PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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